

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ELAN MICROELECTRONICS CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PIXCIR MICROELECTRONICS CO. LTD., )  
 )  
 Defendant. )

Case No. 2:10-cv-00014-GMN-PAL

**ORDER**

(Emg Mot Compel Depo Testimony - Dkt. #196)

Before the court is Elan Microelectronics Corporation's Emergency Motion to Compel Deposition Testimony Pursuant to Rule 30(b)(6) (Dkt. #196). The court has considered the Motion, the Declaration of Sean P. DeBruine in Support (Dkt. #197), Supporting Exhibits (Dkt. #198), Defendant's Response (Dkt. #205), Declaration of Christopher Ogden (Dkt. #206), and Elan's Reply (Dkt. #215).

**BACKGROUND**

This is a patent infringement action brought by the Plaintiff Elan who is the sole owner of United States Patent No. 5,825,352 ("352 Patent") entitled "Multiple Finger Contact Sensing Method for Emulating Mouse Buttons and Mouse Operations on a Touch Sensor Pad." Am. Complaint, ¶5 (Dkt. #8). Plaintiff is a Taiwanese corporation. *Id.*, ¶4. It conducts research and development for "products that enable Smart Human-Machine Interface solutions." *Id.*, ¶7. Plaintiff develops "capacitive touch pads and transparent touch screens" capable of recognizing "touch pad gestures involving multiple simultaneous finger touches for input devices." *Id.* Plaintiff's Capacitive Touch Pad Multi-Finger Solution is one embodiment of the '352 Patent. *Id.*, ¶8.

Defendant Pixcir designs, markets, and sells integrated circuit products. *Id.*, ¶9. Plaintiff alleges that Pixcir has infringed the '352 Patent by using, selling, offering for sale, and marketing touch pad and touch screen products that have the ability to recognize multi-finger gestures. *Id.*, ¶11.

1 In the current motion, Elan seeks an order compelling Defendant Pixcir Microelectronics Co.  
2 Ltd., (“Pixcir”) to produce a witness qualified and adequately prepared to testify on the subject matter  
3 of Topics 3, 4 and 6 of Elan’s August 23, 2012, Notice of Deposition Pursuant to Rule 30(b)(6). Topic  
4 3 asked for testimony concerning “the sales and marketing of Pixcir Products including, without  
5 limitation, all efforts to sell, market, or promote the inclusion or use of Pixcir Products in Downstream  
6 Products.” *See* Pixcir Second Notice of Deposition Pursuant to Rule 30(b)(6) attached as Exhibit “1” to  
7 DeBruine Declaration (Dkt. #197). Topic 4 requested testimony concerning “Pixcir’s communications  
8 and contacts with third parties relating to the actual or potential supply or inclusion of Pixcir Products  
9 and Downstream Products.” *Id.* Topic 6 asked for a Rule 30(b)(6) designee to address “the revenues,  
10 sales, costs, profits, margins, expenses and other financial information for the Pixcir products” which  
11 are alleged to infringe Elan’s patent.

12 Pixcir designated its Chief Operating Officer (“COO”), Mr. Fuentes, to testify with respect to  
13 topics 3 and 4 of the Rule 30(b)(6) notice. Elan claims that during his deposition, which was taken in  
14 London, Mr. Fuentes admitted that he knew nothing regarding Pixcir’s sales activities in China and had  
15 made no efforts to prepare himself on that topic. Elan requested that Pixcir provide a witness to cover  
16 that subject matter. Elan claims that at the deposition of Mr. Chen, which was to be taken in Hong  
17 Kong several weeks later, Pixcir attempted to designate Mr. Chen on topics 3 and 4 as they pertain to  
18 Pixcir’s China operations. However, when counsel for Elan started to question him, counsel for Pixcir  
19 objected that Mr. Chen lacked the knowledge necessary to answer the question despite designating him  
20 to testify on the topics.

21 Mr. Gao was designated as Pixcir’s designee for topic 6 concerning revenue, costs and  
22 accounting. Elan claims that at his deposition he demonstrated a complete lack of knowledge on the  
23 topic. Mr. Gao has only been employed by Pixcir since 2011. He supervises the finance group, but is  
24 not familiar with Pixcir’s day-to-day accounting. He claimed to have spent a few hours reviewing  
25 unspecified documents, but could not provide helpful testimony regarding the financial documents  
26 produced to Elan in this matter. According to counsel for Elan, Mr. Gao repeatedly answered questions  
27 to the effect that he would need to check on the matter and get back to counsel.

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1 Elan seeks evidentiary and monetary sanctions for Pixcir's failure to produce an educated  
2 witness to address the noticed deposition topics. Specifically, Elan requests that the court assess  
3 \$20,000 in costs and attorney's fees incurred in taking the deposition of Mr. Gao as a sanction for  
4 Pixcir's failure to meet its obligations under Rule 30(b)(6). Elan argues monetary sanctions are  
5 appropriate under Rule 30(b)(6) and mandatory under Rule 37(d) for failure to produce an educated  
6 Rule 30(b)(6) witness, unless the failure was substantially justified. Elan claims that it incurred in  
7 excess of \$16,000 in attorney's fees to take Mr. Gao's deposition. In addition, counsel was required to  
8 stay two extra days in Hong Kong for the deposition which resulted in additional hotel charges of  
9 \$2,400. Court reporter and transcription fees totaled \$1,800.

10 Elan also asks that the court preclude Pixcir from offering any evidence of its costs related to the  
11 accused products as a sanction for failing to produce an adequately prepared Rule 30(b)(6) designee.  
12 Elan points out that in a prior hearing, the court observed that obtaining discovery from Pixcir has been  
13 "like pulling teeth." The deposition took place only two weeks before the discovery cutoff, and Elan  
14 accuses Pixcir of engaging in dilatory conduct. Under these circumstances, Elan argues that harsh  
15 sanctions are appropriate and Pixcir should be precluded at trial from offering any evidence as to costs  
16 that would be deducted from its revenue to reduce the profits it has made from its infringing sales.  
17 Alternatively, Pixcir should be ordered to present a thoroughly prepared witness to testify in the United  
18 States well before the expert witness reports are due.

19 Pixcir opposes the motion arguing that in early discovery in this case Elan learned that Pixcir  
20 sales in the United States consisted of a few dozen experimental demo units worth only a few thousand  
21 dollars. Despite the small amount in dispute, Pixcir has "essentially laid open its files" regarding all its  
22 products and sales worldwide regardless of any direct relevance to the claims involved in this case.  
23 However, it is clear that very little of this discovery has anything to do with the alleged infringement in  
24 the United States alleged in the complaint. Pixcir argues that Elan's last minute motions are part of an  
25 aggressive strategy wholly disproportionate to this case. Pixcir designated four Pixcir witnesses it  
26 believed had the most knowledge on the topics described in Elan's second notice of deposition. These  
27 witnesses included Lionel Portmann, the Chief Technical Officer; Vincent Fuentes, the COO; Hongbo  
28 Gao, the Assistant to the CEO in charge of Finance; and Rudy Chen, Pixcir's Vice President. Pixcir

1 subsequently designated Jiin-Wei Hung, its CEO, as a supplemental Rule 30(b)(6) witness and made  
2 him available for two days of testimony. Elan has been provided with ten days of Rule 30(b)(6)  
3 deposition testimony on its twelve topics, and all of the deponents were from Pixcir's senior  
4 management.

5 Vincent Fuentes, Pixcir's COO, was designated as the witness to address topics 3 and 4. After  
6 the deposition, Elan asked for a supplemental witness to testify as to topics 2, 4, and 12, as they relate to  
7 events in Pixcir's Chinese office. Pixcir agreed to designate Mr. Hung, Pixcir's CEO, to testify  
8 concerning topics 2 and 4, as they relate to activities in China, and designated Mr. Rudy Chen, its VP,  
9 as a supplemental witness to testify regarding topic 12 on Pixcir's Chinese operations.

10 Mr. Gao is the assistant to the CEO in charge of Pixcir's Finance and sometimes referred to as  
11 the VP of Finance. He was designated to testify solely on topic 6. He reviewed financial data, recent  
12 financial statements, emails, and other financial related documents provided to him by Pixcir for about  
13 three hours. To the extent that Mr. Gao was not specifically able to authenticate the particular  
14 documents presented to him during his deposition, Pixcir stipulated to their authenticity.

15 Pixcir's opposition points out that the motion does not present any evidence that Mr. Fuentes  
16 was inadequately prepared to address topic 3, or that both Messrs. Fuentes and Hung were inadequately  
17 prepared to address topic 4. Pixcir has now provided three witnesses, Messrs. Fuentes, Hung, and  
18 Chen, to testify concerning what information Pixcir knows about "Downstream Products" referred to in  
19 topics 3 and 4, and the motion does not point out how their testimony was deficient in any manner.

20 Pixcir disputes that Mr. Gao was not prepared to testify concerning topic 6. Mr. Gao testified  
21 that he read extensively in preparing for his deposition and looked into each of the product series and  
22 their associated costs and expenses, profits and losses of every product, current and past customer lists,  
23 and some individual invoices, statements and vouchers. Mr. Gao also testified he reviewed relevant  
24 emails and spent approximately three hours in preparing for this single deposition topic. Given his  
25 responsibilities and senior management position, Pixcir argues this was a reasonable amount of time to  
26 spend preparing. Pixcir accuses Elan of trumping up complaints about Mr. Gao's testimony. Pixcir  
27 contends that Mr. Gao could not reasonably be expected to memorize financial figures found in every  
28 conceivable financial document produced by Pixcir, or to verify on the spot the accuracy of any

1 particular number. Pixcir maintains that Elan used much of Mr. Gao's deposition to repeatedly present  
2 him with tables of figures and asked him to verify the accuracy of those figures and vouch for the  
3 underlying math which was an impossible task for any employee.

4 Elan replies that Pixcir's response concerning Mr. Gao's Rule 30(b)(6) deposition testimony  
5 effectively admits the motion should be granted. Mr. Gao was unable to explain the cost of Pixcir's  
6 Tango S Products. Mr. Gao was shown documents showing conflicting cost structures for Pixcir's  
7 Tango S Products and admitted he could not verify which, if either, of the numbers were accurate. Gao  
8 testified that certain unnamed employees of Pixcir who created those cost figures could explain them.  
9 These admissions demonstrate that Mr. Gao could not testify to information known or reasonably  
10 available to Pixcir as required by Rule 30(b)(6). Pixcir does not suggest that resolution of its costs for  
11 the Tango S Products is outside the scope of the notice or that the information sought is not reasonably  
12 available to Pixcir. Thus, Pixcir must provide a knowledgeable witness prepared to testify about the  
13 revenue, sales, costs, profits, margins, expenses, and other financial information for its products. Elan  
14 maintains that Mr. Gao lacked basic information called for in the notice, although he admitted that the  
15 information was available, and given the opportunity he could get it. Elan suggests that Mr. Gao could  
16 have prepared for his deposition by confirming the documents that accurately demonstrate the revenues,  
17 sales, profits, etc., and other financial information for Pixcir's products and bringing them to his  
18 deposition. Instead, he refused to identify a single document he used to prepare. Pixcir has offered to  
19 authenticate contradictory documents on these subjects. However, Mr. Gao repeatedly disavowed the  
20 documents when he disclaimed any knowledge concerning the accuracy of the figures, or the  
21 genuineness of the documents themselves. Authentication of documents with a corresponding  
22 disavowal of the truth or accuracy of the documents is insufficient to meet a party's Rule 30(b)(6)  
23 obligations.

24 The reply argues, without any support, that Pixcir failed in its obligations concerning topics 2, 4,  
25 and 12, by ignoring Elan's protest that the witnesses originally produced were inadequately prepared,  
26 and by attempting to designate a new witness for these topics immediately prior to a previously agreed  
27 and scheduled deposition. This tactic, it is argued, evaded Pixcir's discovery obligations, and both  
28 evidentiary and monetary sanctions are therefore appropriate. Elan asks for monetary sanctions to

reimburse it for Pixcir's failure to produce a fully-educated Rule 30(b)(6) witness. In addition, Elan asks that the court preclude Pixcir from producing any evidence of its costs that would reduce the profits it has made from infringing sales.

## DISCUSSION

### **I. Rule 30(b)(6)**

Rule 30(b)(6) of the Federal Rules of Civil Procedure provides, in pertinent part:

A party may in the party's notice and in the subpoena may name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The person so designated shall testify as to the matters known or reasonably available to the organization.

*Id.*

The purpose of the rule is to streamline the discovery process. *Resolution Trust Corp. v. Southern Union Co., Inc.*, 985 F.2d 196, 197 (5th Cir.1993). It serves a unique function in allowing for a specialized form of deposition. *Sprint Comm'ns Co., L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524, 527 (D. Kan. 2006). The rule "gives the corporation being deposed more control by allowing it to designate and prepare a witness to testify on the corporation's behalf." *U.S. v. Taylor*, 166 F.R.D. 356, 360 (M.D.N.C.1996). It is a discovery device employed by the examining party "to avoid the 'bandying' by corporations where individual officers disclaim knowledge of facts clearly known to the corporation." *Id.* Or, as another district court articulated, "One of the purposes of Rule 30(b)(6) is to curb any temptation a corporation might have to shunt a discovering party from "pillar to post" by presenting deponents who each disclaim knowledge of facts clearly known to someone in the organization." *Federal Deposit Ins. Corp. v. Butcher*, 116 F.R.D. 196, 199 (E.D.Tenn.1986).

Rule 30(b)(6) imposes burdens on both the discovering party and the designating party. The party seeking discovery through a Rule 30(b)(6) deposition is required to describe "with reasonable particularity the matters on which examination is requested." Fed.R.Civ.P. 30(b)(6). Once served with a deposition notice under Rule 30(b)(6), the responding party is required to produce one or more

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1 witnesses knowledgeable about the subject matter of the noticed topics. *Marker v. Union Fidelity Life*  
2 *Insurance Company*, 125 F.R.D. 121, 126 (M.D.N.C.1989).

3 The testimony of a Rule 30(b)(6) designee “represents the knowledge of the corporation, not of  
4 the individual deponents.” *Taylor*, 166 F.R.D. at 361; *Hyde v. Stanley Tools*, 107 F.Supp.2d 992 (E.D.  
5 La., 2000); *Sprint*, 236 F.R.D. at 527. A Rule 30(b)(6) designee presents the corporation's position on  
6 the noticed topics. *United States v. Massachusetts Indus. Finance Agency*, 162 F.R.D. 410, 412 (D.  
7 Mass.1995). A corporation has a duty under Rule 30(b)(6) to provide a witness who is knowledgeable  
8 in order to provide “binding answers on behalf of the corporation”. *Starlight International, Inc. v.*  
9 *Herlihy*, 186 F.R.D. 626, 638 (D. Kan.1999). A Rule 30(b)(6) designee is not required to have personal  
10 knowledge on the designated subject matter. *Sprint*, 236 F.R.D. at 528; *PPM Finance v. Norandal*, 297  
11 F.Supp.2d 1072, 1085-86 (N.D. Ill., 2004); *Calzaturificio v. Fabiano Shoe Co., Inc.*, 201 F.R.D. 33, 37  
12 (D. Mass.2001).

13 The designating party has a duty to designate more than one deponent if necessary to respond to  
14 relevant areas of inquiry on the noticed topics. *Id.*; *Barron v. Caterpillar, Inc.*, 168 F.R.D. 175, 176  
15 (E.D.Pa.1996); *Starlight*, 186 F.R.D. at 638 (corporation must produce “such number of persons as will  
16 satisfy the request”); *In re: Vitamins Antitrust Litigation*, 216 F.R.D. 168, 172 (D.D.C.2003); *Securities*  
17 *& Exchange Comm'n v. Morelli*, 143 F.R.D. 42, 45 (S.D.N.Y.1992); *Reilly v. Natwest Markets Group,*  
18 *Inc.*, 181 F.3d 253, 268 (2d Cir.1999).

19 Rule 30(b)(6) is not designed to be a memory contest. *Bank of New York v. Meridien BIAO*  
20 *Bank Tanzania Ltd.*, 171 F.R.D. 135, 150 (S.D.N.Y.1997). However, a corporation has “a duty to make  
21 a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and  
22 to prepare them to fully and unequivocally answer questions about the designated subject matter.”  
23 *Starlight*, 186 F.R.D. at 639; *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 75 (D.Neb.1995) (“If  
24 the rule is to promote effective discovery regarding corporations, the spokesperson must be informed.”);  
25 *In re: Vitamins Antitrust Litigation*, 216 F.R.D. at 172 (corporation is obligated to produce one or more  
26 Rule 30(b)(6) witnesses who are thoroughly educated about the noticed deposition topics and facts  
27 known to the corporation or its counsel).

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1 The duty to prepare a Rule 30(b)(6) designee goes beyond matters personally known to the  
2 witness or to matters in which the designated witness was personally involved. *Buycks-Roberson v.*  
3 *Citibank Federal Savs. Bank*, 162 F.R.D. 338, 343 (N.D. Ill.1995); *Securities and Exchange*  
4 *Commission v. Morelli*, 143 F.R.D. 42, 45 (S.D.N.Y.1992). The duty to produce a prepared witness on  
5 designated topics extends to matters not only within the personal knowledge of the witness but on  
6 matters reasonably known by the responding party. *Alexander v. Federal Bureau of Investigation*, 186  
7 F.R.D. 137, 141 (D.D.C.1998). “By its very nature, a Rule 30(b)(6) deposition notice requires the  
8 responding party to prepare a designated representative so that he or she can testify on matters not only  
9 within his or her personal knowledge, but also on matters reasonably known by the responding entity.”  
10 *Alliance v. District of Columbia*, 437 F. Supp. 2d 32, 37 (D.D.C.2006) (internal citation omitted).

11 The fact that an organization no longer has a person with knowledge on the designated topics  
12 does not relieve the organization of the duty to prepare a Rule 30(b)(6) designee. *Taylor*, 166 F.R.D. at  
13 361. There, the court recognized that it is not uncommon to find that a corporation no longer employs  
14 individuals who have memory of distant events, or to find that individuals with knowledge are  
15 deceased. *Id.* “These problems do not relieve a corporation from preparing its Rule 30(b)(6) designee to  
16 the extent matters are reasonably available, whether from documents, past employees, or other sources.”  
17 *Id.* A party producing a Rule 30(b)(6) witness “must prepare deponents by having them review prior  
18 fact witness deposition testimony as well as documents and deposition exhibits.” *Id.* at 362.

19 The Federal Rules of Civil Procedure do not permit a party served with a Rule 30(b)(6)  
20 deposition notice or subpoena request “to elect to supply the answers in a written response to an  
21 interrogatory” in response to a Rule 30(b)(6) deposition notice or subpoena request. *Marker v. Union*  
22 *Fidelity Life Insurance*, 125 F.R.D. 121, 126 (M.D.N.C.1989). “Because of its nature, the deposition  
23 process provides a means to obtain more complete information and is, therefore, favored.” *Id.* Similarly,  
24 in responding to a Rule 30(b)(6) notice or subpoena, a corporation may not take the position that its  
25 documents state the company's position. *In re: Vitamins Antitrust Litigation*, 216 F.R.D. at 172, 174.  
26 There, the defendants produced a timeline of events relevant to the litigation based on interviews of  
27 former employees and a review of accompanying documents and took the position at a Rule 30(b)(6)  
28 deposition that because statements of former employees are imputed to the company by operation of



law, the timelines “spoke for themselves” and the corporation need not produce a Rule 30(b)(6) deponent to provide an explanation. The court rejected this argument, stating:

Bioproducts' objection rests on a misinterpretation of Rule 30(b)(6) and a mistaken view that mere authentication of the documents submitted with a corresponding disavowal of the truth or accuracy of the documents is sufficient to satisfy the requirements of Rule 30(b)(6) .... [there is] nothing in the rules or caselaw that would justify [such an] understanding of a sufficient Rule 30(b)(6) deposition.

*Id.* at 172.

Several courts have recognized that preparing a Rule 30(b)(6) designee may be an onerous task and that it is not uncommon for a corporation to claim:

... that it no longer employs individuals who have memory of a distant event or that such individuals are deceased.... These problems do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.

*Taylor*, 166 F.R.D. at 360-61 (internal citations omitted). Although adequately preparing a Rule 30(b)(6) deposition can be burdensome, “this is merely the result of the concomitant obligation from the privilege of being able to use the corporate form in order to conduct business.” *Id.* at 362. *Sprint*, 236 F.R.D. at 528 (acknowledging compliance with Rule 30(b)(6) may be onerous but that the Rule's requirements “negate any possibility that an inquiring party will be directed back and forth from one corporate representative to another, vainly searching for a deponent who is able to provide a response which would be binding on that corporation.”)

Finally, if an organization designates a witness it believes in good faith would be able to provide knowledgeable responsive testimony and it becomes apparent during the deposition that the designee produced is unable to respond to relevant areas of inquiry, the responding party has a duty to designate an additional knowledgeable deponent. *Marker*, 125 F.R.D. at 126; *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 75 (D. Neb.1995); *Starlight*, 186 F.R.D. at 638; *Sony v. Soundview Technologies*, 217 F.R.D. 104, 112 (D. Conn.2002).

## **II. Application and Analysis**

The court has carefully reviewed the moving and responsive papers and supporting declarations and exhibits including more than 200 pages of Mr. Gao's two-day deposition testimony. The motion to compel will be denied to the extent it complains about the inadequacy of Rule 30(b)(6) testimony

1 offered on topics 3 and 4. The motion simply does not support Elan's claims that the witnesses'  
2 deposition testimony was inadequate in any specific respects. Pixcir admitted that the initial two  
3 witnesses it produced were unable to address the topics with respect to its Chinese operations, but  
4 subsequently designated an additional knowledgeable deponent, Mr. Chen, when it was apparent during  
5 the deposition that the designees it produced were unable to respond to relevant areas of inquiries with  
6 respect to Pixcir's Chinese operations.

7         However, after careful of Mr. Gao's deposition testimony, the court will grant Elan's request for  
8 evidentiary sanctions for Pixcir's failure to produce a fully-educated Rule 30(b)(6) designee able to  
9 address topic 6 of the deposition notice. The court will deny Elan's request for monetary sanctions  
10 finding that Mr. Gao made some effort to educate himself and provided significant discovery on  
11 substantive issues involved in topic 6. Mr. Gao testified that he spent approximately three hours  
12 reviewing documents he assembled and documents provided to him by other members of the finance  
13 department. He familiarized himself generally with the nature of the claims involved in this lawsuit, as  
14 well as another lawsuit between the parties pending in China. He described the types of documents he  
15 reviewed, and efforts to educate himself about products and accounting information preceding his  
16 employment.

17         Counsel for Elan spent the first sixty pages of the deposition over several hours asking  
18 questions before asking the deponent a single question about the specific Rule 30(b)(6) topic on which  
19 he was designated to testify. The deposition took substantially more time to conduct than usual  
20 because an interpreter was required to translate questions and answers before the court reporter could  
21 record the questions and answers. From the court's review of the transcript, it appears counsel for Elan  
22 is fluent in Chinese as she frequently corrected the translator during the deposition. Counsel for Elan  
23 frequently told the interpreter that the question was not properly translated, or the answer was not  
24 properly translated. Counsel for Elan also frequently interrupted the witness telling Mr. Gao his answer  
25 was non-responsive before the translator could provide a translation which the court recorder could  
26 record.

27         The court's review of two days of the deposition testimony indicates that the witness was  
28 responsive to the majority of counsel's questions despite counsel's protestations to the contrary. The

1 manner in which the witness expressed himself was not as direct as one would expect of a native  
2 English speaker. However, when Mr. Gao was asked simple direct questions, he responded simply,  
3 concisely, and directly for the most part.

4 Counsel for Elan asked Mr. Gao to identify every single document he reviewed in preparation  
5 for his deposition. She spent more than an hour asking questions about what he reviewed and with  
6 whom he spoke before the deposition. Mr. Gao generally identified the materials he reviewed and each  
7 the individuals with whom he spoke. Mr. Gao provided significant meaningful discovery concerning  
8 Pixcir's accounting rules and their compliance with Chinese government national standards. He  
9 described the components of cost allocations for Pixcir products, and testified about the cost  
10 information for Pixcir products its sales people would be interested in versus the more detailed  
11 information the finance department kept. Mr. Gao is the senior member of Pixcir management and a  
12 knowledgeable witness. He provided significant relevant discovery. The court therefore rejects Elan's  
13 arguments that counsel for Elan wasted two days obtaining worthless discovery.

14 However, the court finds Mr. Gao was clearly not prepared to address and provide meaningful  
15 answers binding the corporation concerning the details of Pixcir's revenues, sales, costs, profits, and  
16 expenses for the Pixcir products which are alleged to infringe Elan's patent in this case. Mr. Gao was  
17 shown documents produced by Pixcir in this case documenting these topics and repeatedly testified that  
18 he did know if the information was accurate. He repeatedly testified throughout the deposition that he  
19 did not personally verify the accuracy of the information concerning Pixcir's revenues, costs, profits,  
20 etc., that he did not know who compiled the documents, when the documents were compiled, whether  
21 the documents were accurate, and whether the persons who did compile the information verified the  
22 accuracy of the figures. Mr. Gao clearly testified that the specific information requested concerning  
23 Pixcir's revenues, costs, profits, etc., was available on Pixcir's accounting system although printed  
24 reports were not normally prepared because the information was confidential. However, he made no  
25 attempt to compile or verify the accuracy of information available to Pixcir from its accounting system  
26 on the specific topic of the deposition for which he was designated to testify as the corporation's  
27 designee. Many of the exhibits that were shown to Mr. Gao that Pixcir produced in this case reflected  
28 inconsistent cost figures for the same Pixcir product. Mr. Gao noted the discrepancies, but was unable

1 to explain them.

2 Mr. Gao testified that he only spoke with counsel for approximately ten to twenty minutes  
3 before the deposition to familiarize himself with the process. Mr. Gao attempted to speak with counsel  
4 on the phone before the deposition, but was not fluent in English and did not believe he understood  
5 much of the conversation. It is clear to the court that Mr. Gao was not a thoroughly educated witness  
6 about the noticed topic and the facts known to the corporation. A Rule 30(b)(6) deposition is not a  
7 memory contest or an opportunity to require a witness to do detailed mathematical calculations on the  
8 spot. A corporation and its counsel cannot be expected to anticipate every question or line of inquiry  
9 opposing counsel might ask in a Rule 30(b)(6) deposition. However, the line of questions asked by  
10 counsel for Elan concerning the specifics of the costs and revenues for Pixcir products involved in this  
11 case are questions a thoroughly educated Rule 30(b)(6) deponent should have been prepared to answer.  
12 Mr. Gao was not only unable to answer the majority of questions directly related to topic 6, but  
13 disavowed knowledge of the contents of documents the corporation produced in discovery on the topic,  
14 and whether the information was accurate.

15 Pixcir's offer to stipulate to the authenticity of documents produced in discovery to verify its  
16 costs of sales, revenues, and profits, does not relieve it of its obligation to produce a fully-educated Rule  
17 30(b)(6) deponent. Indeed, the purpose of a deposition is to allow opposing counsel to obtain more  
18 complete information and to probe the facial validity of information produced in documents and by  
19 other discovery techniques. Elan was entitled to question a fully-educated Rule 30(b)(6) designee of  
20 the corporation concerning such issues as the manner in which the documents were produced, the  
21 method used to compile the data, the underlying data relied upon, the accuracy of the information, and  
22 whether the accuracy of the information was verified, and if so, by whom. This is information that was  
23 clearly reasonably available to the corporation. Under these circumstances, the court concludes that  
24 evidentiary sanctions are warranted.

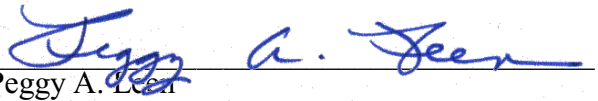
25 **IT IS ORDERED** that Elan's Emergency Motion to Compel Deposition Testimony (Dkt. #196)  
26 is **GRANTED in part** and **DENIED in part**.

- 27 1) The motion is **GRANTED** to the extent that Pixcir shall be precluded at trial or in  
28 motion practice from offering any evidence concerning its costs that would be deducted

1 from its revenue to reduce the profits it has made from any alleged infringing sales.

2 2) The motion is **DENIED** in all other respects.

3 Dated this 7th day of August, 2013.

4   
5 Peggy A. Leen  
United States Magistrate Judge